

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
MENZEL, : Docket #24cv860
Plaintiff, :
- against - :
ROADGET BUSINESS PTE LTD., et al., : New York, New York
Defendants. : November 7, 2024

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PROCEEDINGS BEFORE
THE HONORABLE SARAH CAVE,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None				
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E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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2 THE COURT: Good morning, this is Magistrate
3 Judge Cave. We're here for a conference in Menzel v.
4 Roadget Business, case number 24cv860. May I have the
5 appearances starting with plaintiff's counsel please.

6 MR. ANDREW GERBER: Yes, Your Honor, this is
7 Andrew Gerber for plaintiff. I'm on the phone with my
8 colleague Vanessa Sorrentino.

9 THE COURT: All right, good morning.

10 MR. GERBER: Good morning.

11 THE COURT: And for defendants.

12 MR. SCOTT SHAW: Scott Shaw on behalf of
13 defendants.

14 THE COURT: Okay, good morning. So we have the
15 parties joint status letter that lists a number of
16 issues that were raised or documented in the Court's
17 post-conference order from last time. I would like to,
18 just in terms of the agenda, start today with the items,
19 the six items that were listed in the Court's post-
20 conference order from October 1, and then we'll turn to
21 the financial information that the plaintiff is seeking
22 from the defendants. Then we'll talk about scheduling
23 including scheduling of depositions, and we'll touch on
24 the motions for leave to amend as well.

25 So, Mr. Gerber or Ms. Sorrentino, may I start

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2 with you. It seems like with respect to the six
3 categories in the Court's post-conference order, the
4 defendants say that they have produced something. I
5 understand that you're not happy with it. But what are
6 you claiming is missing from the six items that the
7 Court ordered in the post-conference order from October
8 1?

9 MR. GERBER: Yes, thank you, Your Honor, this
10 is Andrew Gerber. I guess the first one is transaction
11 data. I want to flag that defendants have flagged this
12 as attorney's eyes only. So I'll defer to defendants as
13 to whether they want to have this portion of the
14 discussion be off the record or move to seal it later
15 on, but I want to just flag that just to be fully
16 transparent and comply with the protective order.

17 THE COURT: Okay, well, proceed, and then when
18 you get the transcript, if there's anything that needs
19 to be marked confidential, you could do so.

20 MR. GERBER: Understood. So the transaction
21 data that defendants produced is glaringly inconsistent.
22 So we knew on the documents defendants produced that
23 there are over 700,000 units of infringing products that
24 were ordered and stored by defendants. However, the
25 total data they produced to date only covers 210,860

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2 transactions. So there's a little under 500,000
3 transactions that are missing. In the other parallel
4 cases, this has not been an issue. There's be, it's
5 been consistent. The difference is here, there's this
6 pretty glaring anomaly between what we know the total
7 units sourced are and the total transaction at issue.

8 So we're just trying to figure out why there is
9 this 500,000 transaction discrepancy, what's missing,
10 why is it missing. We have not gotten any information
11 about that.

12 THE COURT: Were there some transactions that
13 involved multiple units or is it a unit transaction, is
14 it a one-for-one --

15 MR. GERBER: It's a one-for-one, Your Honor.

16 THE COURT: Okay. Mr. Shaw.

17 MR. SHAW: I'd have to ask my client to look
18 into it because I'm not, this is the first I've heard of
19 it. But Mr. Gerber is making that representation and
20 you said that it hadn't been an issue in the other case,
21 it's probably something that I can look into and get a
22 response to him very quickly. The one thing that my
23 client is typically able to turn around and in a
24 reasonable amount of time is information regarding to
25 transactional data. It's not an overly burdensome item.

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2 So I don't expect that would be an issue.

3 THE COURT: Okay.

4 MR. SHAW: I'll have to look into that and get
5 Mr. Gerber an answer. I just don't have an answer for
6 you on the call today because it's the first I heard of
7 it.

8 THE COURT: Very good, thank you. So we'll put
9 that on the follow-up list. What's next, Mr. Gerber?

10 MR. GERBER: Documents regarding how the 107
11 products were created, designed, and sourced. They've
12 produced nothing on this. They say none exist, but they
13 have these for some products, for about 31 products we
14 have this information, but there's 107 products for
15 which they have not. So, again, we're not sure why
16 these documents are missing. If defendants wants to
17 take the position, I know Your Honor mentioned this
18 before, look, if defendants say, look, these documents
19 don't exist, understand, this is sort of why depositions
20 are necessary if we want, if defendants' position is we
21 just don't have these documents, fine, at a certain
22 point we can't keep pushing that. We need to take
23 depositions and ask the deponents well, why is that the
24 case.

25 THE COURT: Okay, last chance, Mr. Shaw. Are

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2 you going --

3 (interposing)

4 THE COURT: -- otherwise we got to move on.

5 MR. SHAW: I understand. We don't have
6 documents.

7 THE COURT: Okay, but just be warned if you sit
8 down for the deposition and this witness, your witness
9 miraculous says oh, yeah, we do have those documents,
10 here are they, and then you need to produce them, and
11 the witness needs to come back, that's going to be at
12 your client's expense. Just consider the warning.

13 MR. SHAW: Yes, I understand.

14 THE COURT: Okay, thank you. Next.

15 MR. GERBER: Thank you, Your Honor. And to be
16 clear, we're trying to be cooperative and resolve this
17 and appreciate that. The next is an organizational
18 chart showing the relationship between defendants. One
19 was produced, it's inaccurate. We know that defendant
20 Fashion Choice ownership is not correctly shown in the
21 chart. In addition, the chart is missing the defendant
22 Zoetop. So, again, they were ordered to produce a
23 complete accurate chart, they have not.

24 THE COURT: Mr. Shaw.

25 MR. SHAW: The org chart we produced is what we

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2 produced. I guess, I mean we've produced a responsive
3 document. If he thinks it's inaccurate, I guess that's
4 an argument. I don't know if it's per se a discovery
5 dispute. And with respect to Zoetop I have not been
6 able to locate one.

7 THE COURT: Okay, why don't you ask the witness
8 about this in the deposition, Mr. Shaw, or Mr. Gerber.
9 Okay?

10 MR. GERBER: Sure. Just to be clear, this is
11 an attorney created documents, and it's just literally
12 missing information. Missing defendant Zoetop. So, you
13 know, I'm not sure why that's the case, but, sure, if
14 that's absolutely something that I can ask the witness,
15 and they'll confirm that, in fact, one of the parties is
16 missing. But happy to defer to deposition.

17 THE COURT: Okay, thank you.

18 MR. GERBER: And then communication - sorry,
19 number two, moving on, was communications both with
20 plaintiff and concerning plaintiff's infringement
21 allegations. There's been no privilege log produced,
22 and my understanding is that defendants are saying,
23 well, these are all privileged communications. We
24 haven't seen any and we have no privilege log. So if
25 defendants are going to take that deposition, we need to

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2 have a privilege log, and nothing's been provided.

3 THE COURT: Okay, Mr. Shaw, are you preparing a
4 privilege log?

5 MR. SHAW: Yes. Can I get clarity on that?
6 Communications regarding what issue?

7 THE COURT: Plaintiffs and her complaints of
8 infringement.

9 MR. SHAW: Okay. Yeah, so we produced the
10 correspondence, and then we're talking about the - yeah,
11 I can prepare a privilege log, sure.

12 THE COURT: Okay, how long do you need to do
13 that, two weeks?

14 MR. SHAW: That'd be great, yeah.

15 THE COURT: Okay. Very good.

16 MR. GERBER: And just to clarify, to answer the
17 question, every time plaintiff reported the infringement
18 to Shein which she did repeatedly, we just want to know,
19 you know, among other things, what was Shein's response,
20 what were the communications internally about that.

21 THE COURT: Okay, is there additional
22 correspondence, Mr. Shaw, that is not privileged that
23 you haven't produced or are you saying anything that you
24 haven't produced is privileged?

25 MR. SHAW: What we produced is non-privileged.

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2 I have not seen privileged communications, but to the
3 extent they exist, I will be logging those within two
4 weeks.

5 THE COURT: All right. Okay, so you either
6 have what there is or you're going to get a log of it,
7 and then you can, if there's issues with the log, Mr.
8 Gerber, you can (indiscernible).

9 MR. GERBER: Understood, thank you, Your Honor.

10 THE COURT: Great, next.

11 MR. GERBER: Then the last two, defendants'
12 terms and conditions, and the results of the defendants'
13 review process. We have not gotten these for the
14 former, we have not gotten them without explanation.
15 And then for the review process documents, we're missing
16 these for many products, (indiscernible) said some don't
17 exist. Again, for these two things, if defendants'
18 position is, in fact, these don't exist, these, again,
19 are items that we can ask about in deposition without
20 having to push this further.

21 THE COURT: Okay, I thought Mr. Shaw said in
22 his response that they did produce their internal
23 records, I'm looking at page 4 of the letter, internal
24 records regarding the results of their product review
25 process. Is that correct, Mr. Shaw?

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2 MR. SHAW: Yes.

3 THE COURT: And then a little bit earlier in
4 that paragraph, they say they've produced the current
5 and archived terms and conditions. Are you just not
6 sure where those are in the production, Mr. Gerber, or
7 you've seen them and that's not what you're looking for?

8 MR. GERBER: So I'll answer the (indiscernible)
9 first. They produced only single version of those, and
10 we know there's multiple versions or we're missing other
11 versions if they don't have the version, they can make
12 confirm that, and we'll ask about that in depositions.
13 And then as for the product review process, we're
14 missing that for over 20 of the product at issue. We
15 have no product review process documents.

16 THE COURT: Mr. Shaw.

17 MR. SHAW: Yes, I mean if they don't exist, we
18 can't produce them. So we've produced what we have, but
19 I think Mr. Gerber's right, you can ask about those
20 issues in deposition as we discussed with I think it was
21 point number 2, we're adding 107. And terms and
22 conditions, the thing that other versions exist, I'm not
23 aware of that, but I'll follow up and ask my clients if
24 there are any additional versions that we have. I'm
25 just thinking aloud right now.

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2 THE COURT: I'll include it in the post-
3 conference order as well.

4 MR. SHAW: Okay.

5 THE COURT: I think that's everything from the
6 October 1 order, Mr. Gerber. Anything else?

7 MR. GERBER: Yes, Your Honor, so missing SKU's.
8 So there were - defendants produced hundreds of
9 documents about each of the products, and we discussed
10 this at the last conference. It wasn't in order. And
11 defendants agreed at the last conference that they would
12 provide the SKU's for each of the products because right
13 now what we have are, we have these documents, you know,
14 documents for each product but we don't know the product
15 to which they apply. So we have information but no
16 product link, and so it's impossible for us to
17 understand the product that it applies to. And
18 defendants at the last conference said they would
19 provide the SKU list corresponding to each of the
20 documents, and we have not gotten that yet. I think
21 that would be a much more efficient way of dealing with
22 this than having to go through 300 documents in a
23 deposition asking which document, which product is each
24 applied to.

25 THE COURT: Sure. A SKU list, Mr. Shaw.

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2 MR. SHAW: Yeah, we've done that before. We
3 can do that. It takes a bit of time, but we can
4 definitely do that.

5 THE COURT: Great.

6 MR. SHAW: It's something that we're going to
7 have to do and create because some of the documents that
8 we produced that relate to a particular SKU don't
9 identify the SKU on the document. So we can do that,
10 you know, the timing of which we can we do that, I would
11 say maybe like, you know, two to three weeks maybe.

12 THE COURT: Why don't we say three, okay.

13 MR. SHAW: Okay.

14 THE COURT: Thank you.

15 MR. SHAW: Thanks.

16 THE COURT: All right, Mr. Gerber.

17 MR. GERBER: Great. And then the last issue is
18 so the server location, this one is critical. So I'd
19 like to explain why it's so important. We've alleged
20 that we're entitled to ex-U.S. profits from sales
21 outside the U.S., and our understanding is that these
22 are essentially well in to the seven figures. So a very
23 huge chunk of damages are outside the U.S. We've
24 alleged that there is a predicate act in the U.S. that
25 allows us to seek those ex-U.S. damages. The location

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of defendants' servers, so where they're hosting these websites at issue and products at issue on the websites that are at issue here, we've alleged that these are in the U.S. And as a result, that is a predicate act in the U.S. Defendants have not moved to dismiss that component of our complaint.

And the response on the discovery issues, defendants have stated that this is public information that we could obtain publicly and that they don't have to produce it. Unfortunately, that's just not the case.

So defendants' websites, like many commercial large websites, use what's called proxy servers. They use Cloudflare as one of them. Essentially, these third parties that are a proxy, so that people visiting their site don't actually see the location of or information about your company's servers. There's a variety of reasons to do this just to conceal the location, security, among other things. So we the public have no way of knowing where the actual servers are located because of these proxy servers.

And so this is information that's obviously in defendants' possession. They know where their servers are. They can just tell us. If they want to stipulate that they're in the U.S., we're fine with that. If they

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want to produce these documents confirming where they are, we're fine doing that too. But this is pretty simple information that we think we are absolutely entitled to receive.

THE COURT: All right, Mr. Shaw.

MR. SHAW: Okay, this is the first I've heard Mr. Gerber offer some options. I just want to make sure I'm clear so I can go back to my client. You said if we could stipulate to where they're located, that would be fine, and then there was another option that I don't think I heard.

THE COURT: I think he said either --
(interposing)

MR. GERBER: We --

THE COURT: -- stipulate to the location or if you had documents showing where they were.

MR. SHAW: Okay.

MR. GERBER: Stipulate that they're in the U.S., to be clear. If you're willing to stipulate they're in the U.S., we're fine with that. And we have raised this multiple times. If you want to stipulate that the servers are in the U.S., that's fine. That resolves the issue. If not, then we would need to see the documents showing where the servers are actually

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located.

THE COURT: You want to discuss it with your client and get back to Mr. Gerber in two weeks?

MR. SHAW: That's fine. I'm writing notes right now. It wouldn't be sufficient to a stip or a declaration just attesting to where they are if they're not in the U.S.?

MR. GERBER: No, we would want to see documentation of that. But because our position is they're in the U.S. So if you want to stipulate to the fact that the servers are in the U.S., that cuts the corner and resolves this. That's fine. But if not, if you won't stipulate that they're in the U.S., we're going to need to see discovery on this and examine where you're claiming they're located.

THE COURT: Why is it that you believe - what's the basis, Mr. Gerber, for believing that they're in the U.S.?

MR. GERBER: We've seen allegations, we've seen statements elsewhere that Shein has moved operations to the U.S. We know they're moving operations to the U.S. We believe that they are conducting business in the U.S., and they have, some of the defendant entities do have locations in the U.S. Shein Technology, for

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2 example, is a U.S.-based defendant, and so we believe
3 that they are, at least with Shein Technology defendant,
4 server locations, documents, and conduct in the U.S.
5 that would constitute predicate acts here.

6 THE COURT: Okay. All right, so, Mr. Shaw,
7 you'll discuss it with your client and you can --

8 MR. SHAW: Yeah.

9 THE COURT: -- inform Mr. --

10 MR. SHAW: I'll either - yes, I'll propose the
11 two options, either stipulation if servers are in the
12 U.S. or documents to show that they are outside the
13 United States.

14 THE COURT: Great. Okay, thank you. Mr.
15 Gerber, are we up to global --

16 MR. GERBER: That --

17 (interposing)

18 MR. GERBER: That's it I think at this point as
19 far as the open written discovery issues.

20 THE COURT: So elaborate for me more. I have
21 obviously your letters on the global revenue, and in
22 your letter you're seeking this discovery has narrowed
23 it to a stipulation. Can you describe exactly what
24 you're proposing the stipulation would say?

25 MR. GERBER: You're asking me, Your Honor?

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2 THE COURT: Yes.

3 MR. GERBER: Andrew Gerber?

4 THE COURT: Yes.

5 MR. GERBER: Yeah, global revenues are
6 concerned, we would be fine having defendants provide
7 the exact same stipulation they provided in the other,
8 the parallel case, in Keller, which is essentially they
9 stipulated to a floor, and, you know, we mentioned
10 confidentiality (indiscernible) discussed here, and they
11 stipulated to a floor, (indiscernible), Scott, of global
12 revenues of \$6 billion. And our understanding was in
13 excess of \$6 billion was the language.

14 We responded, well, in excess is, as a
15 qualifier, it's, we believe it's actually, you know,
16 five to six times that, but eventual resolution in
17 Keller through Judge Netburn was, look, 6 billion is
18 high enough such that it's not going to move the needle
19 much if it's 6 billion or 30 billion, and we agreed with
20 that, and we agreed to accept the stipulation as to \$6
21 million. And we're just doing that here too.

22 THE COURT: Okay. Mr. Shaw, can we --

23 MR. SHAW: I can't get into the issues in the
24 Keller case because there were things on the record or
25 off the record that are unique to that particular case.

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2 I can say the only time it's actually been briefed and
3 decided was the Fitzpatrick case, and the judge denied
4 Mr. Gerber's request. My client's not willing to
5 provide that stipulation for a number of reasons, and
6 those reasons primarily are set forth in our position,
7 in our letter. It's not proportional, it's not
8 relevant, it has, it's going to have no bearing on the
9 issues that are going to be litigated in the case if the
10 case is ever litigated.

11 (interposing)

12 THE COURT: Hold on. Mr. Shaw, is the floor in
13 this case the same as it is in Keller or is it a
14 different number?

15 MR. SHAW: To be honest, Your Honor, I don't
16 have the Keller file up in front of me. I don't even
17 know what the number is and what would be the same.

18 (interposing)

19 THE COURT: -- you said it was 6 billion.

20 MR. SHAW: Mr. Gerber said that. I don't
21 recall. I don't have it in front of me. I don't know
22 what the answer is.

23 THE COURT: Is it the same websites in Keller
24 as in this case?

25 MR. SHAW: The Shein would be the same.

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2 THE COURT: Okay. And you did enter into a
3 stipulation in Keller and --

4 MR. SHAW: No, we had proposed a stipulation
5 that wasn't sufficient according to Mr. Gerber, and it
6 was not sufficient for the court. So no stipulation was
7 entered. We had simply proposed, we had simply provided
8 a proposal to Mr. Gerber which he rejected.

9 THE COURT: Right, but he's saying now he's
10 willing to accept what you proposed in Keller which is a
11 floor of 6 billion. Are you paying attention, Mr. Shaw?
12 Are you listening or are you doing something else while
13 we're talking? You said --

14 MR. SHAW: I'm not --

15 THE COURT: -- he's willing to accept what you
16 proposed in Keller, which is a stipulation that your
17 global revenue was in excess of 6 billion. My question
18 is are you - whether it was finalized in Keller or not,
19 are you and your client willing to enter into a
20 stipulation with a floor of global revenue of 6 billion?

21 MR. SHAW: No.

22 THE COURT: All right. Well, I'm going to
23 order that you do because I find, first of all, the
24 cases that you cite in your letter are inapposite. You
25 cite cases that are wage and hour cases, not cases like

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2 this one, not copyright cases. Second of all, I've
3 reviewed the plaintiff's cases, and the plaintiff's
4 cases support courts requiring disclosure. It's another
5 issue what the jury sees, but we're just talking about
6 discovery here, of the size of the global revenue of the
7 defendant. And I think so it is relevant and it has
8 been ordered by other courts including in, I'm not sure
9 how you pronounce it, the Psihoyos, P-S-I-H-O-Y-O-S,
10 where the court acknowledged that larger defendants and
11 the amount of their financial resources are relevant to
12 the quantification of statutory damages that may be
13 awarded. In particular, the district court decision in
14 that Psihoyos case noted that statutory damages have to,
15 quote, "hurt the offender's pocketbook enough for him or
16 her to take notice." And so for that reason the global
17 revenues are relevant. I'm not predetermining whether
18 it's admitted to the jury, it's another question, but
19 just in terms of whether it is disclosed.

20 It also goes, as the plaintiffs point out in
21 their letter, to the sophistication of the defendants
22 and the jury determination of the state of mind of the
23 defendants when they allegedly engaged in the infringing
24 behavior.

25 So, Mr. Gerber, you can propose or provide to

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2 Mr. Shaw a stipulation that, and I don't know if it's 6
3 billion but whatever the number is that the defendants'
4 global revenue for the websites that are at issue in
5 this case is in excess of X dollars. And so you can
6 provide that to Mr. Shaw, and my hope is that,
7 consistent within the Court's ruling here on the record
8 today, that the parties can finalize that language. And
9 if a stipulation works or a declaration, whatever is
10 preferable, but some piece of evidence that provides
11 the defendants, the floor of the defendants' global
12 revenues for the websites at issue in this case. And so
13 that's the Court's ruling on ECF number 79.

14 Next, are there disputes still about scheduling
15 depositions?

16 MR. GERBER: This is Andrew Gerber, Your Honor.
17 I think it makes to sort of talk that through. There
18 have been some rulings in the other parallel cases
19 within the last 18 hours. So I think it's helpful to
20 talk about that.

21 So in the Fitzpatrick case Judge Furman ordered
22 depositions to proceed before settlement conference and
23 to happen before January 31. We have three depositions
24 that are going to be happening, and we're working with
25 Mr. Shaw to schedule those likely in early December. In

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2 the Amore case Judge Caproni last night issued an order
3 granting our request similar. Depositions are to
4 proceed there by the end of December and also to do so
5 before settlement conference there, and, again, that was
6 last night. We've emailed Mr. Shaw, and we're going to
7 be working with him over the next couple of days to try
8 to get all those scheduled.

9 All that to say, the parties November and
10 December went from open to quite booked. And so I think
11 at this point, also given the fact that we have the
12 pending motion to amend that we thought was going to be
13 stipulated to but it was not, at this point it probably
14 makes sense to, you know, I know that Your Honor gave
15 defendants some weeks to comply with some discovery
16 issues here. If we aim to schedule depositions here,
17 I'd say late January into February, that's fine with
18 plaintiff.

19 THE COURT: Mr. Shaw.

20 MR. SHAW: Yeah, I mean I agree with part of
21 what Mr. Gerber said with respect to Fitzpatrick and the
22 Amore cases and the depositions that were ordered.
23 We've had three defense depositions in Fitzpatrick. We
24 also have a plaintiff's deposition. In Amore there'll
25 possibly be more than three, and we'll have a

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2 plaintiff's deposition. The judge, Judge Furman in
3 Fitzpatrick also had told Mr. Gerber to coordinate
4 regarding all cases to make sure the schedule's
5 sufficiently done, and he had at least expressed some
6 interest in my proposal regarding certain phases and
7 making things sufficient.

8 Mr. Gerger and I really haven't had a chance to
9 talk about stuff. We have a call scheduled tomorrow to
10 do that. But I do agree that November and December are
11 booked. What I can't agree with is late January and
12 early February, and Mr. Gerber knows this. That's
13 Chinese New Year. So we could do early January, for
14 example, like the week of the January 6 and January 13,
15 to carve out for depositions for the defendants. We
16 could probably also do late February. Because Chinese
17 New Year is towards the end of January. That runs into
18 early February, and from what I understand, some of the
19 people start taking that holiday sooner than it's
20 actually says on the calendar and then extend it a bit.
21 So we wouldn't be able to get prepped up and do
22 depositions until later February, but we also have
23 earlier in January available as I've told Mr. Gerber.

24 THE COURT: Okay. Let me just also check in
25 with you about the motion to amend. I'm jumping a

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2 little bit. But I went back and looked at the
3 transcript of the last conference, Mr. Shaw, and you
4 said that you would stipulate. What's changed?

5 MR. SHAW: When I saw the - yes, I recall that
6 as well, Your Honor. I had to look at that. What I
7 received is not what I was expecting to receive when I
8 saw the proposed amended complaint. So I couldn't
9 stipulate.

10 THE COURT: All right --

11 (interposing)

12 MR. SHAW: In part because --

13 THE COURT: -- are you proposing --

14 (interposing)

15 MR. SHAW: Because the defendants --

16 THE COURT: Are you filing an opposition to the
17 motion for leave to amend?

18 MR. SHAW: No, I don't represent - there's a
19 new party added, there's different allegations that were
20 made that were stricken and taken out were in the notice
21 and the time they learned of the infringement or the
22 alleged infringement. So I can't stipulate, but I don't
23 imagine filing an opposition to it either.

24 THE COURT: Okay.

25 MR. SHAW: Oh, one other thing, Your Honor, in

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2 terms of you're asking about depositions and if we're
3 going to be pushing them out till, you know, January or
4 February, we would have availability and per the letter
5 that I had submitted, you know, ask the Court to set a
6 scheduling or, sorry, a settlement conference to have
7 Christina Menzel have an opportunity to, you know, hear
8 what we have to offer in terms of a settlement to see if
9 she has interest.

10 THE COURT: Well, you can do that at any time.
11 You don't need a settlement conference with me. And at
12 this point I don't really have any dates in December
13 that I can offer you in any event. The rest of my year
14 is pretty much booked. So if you want a settlement
15 conference with me, we'd be looking at January at this
16 point. January 14 or 15 I have availability in the
17 afternoon those days.

18 MR. SHAW: I mean --

19 THE COURT: I'm not going to be put a stay of
20 depositions in place in the meantime. I mean it sounds
21 like you have a little bit of (indiscernible) anyway,
22 and I would also encourage you to consider, to the
23 extent we're dealing with 30(b)(6) topics that are the
24 same across all of the cases, I can't require you to do
25 this, but, Mr. Gerber, you might consider whether, is it

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Mr. Wade, for example, if he's going to be a 30(b)(6) witness in one case, maybe you can do all the 30(b)(6) topics that are the same across the cases just with him in one day or one morning or one part of a day. And then have different times for him to do either his individual knowledge or topics that are unique to different cases.

I'm just saying that if it's the same witness, the same Rule 30(b)(6) witnesses for multiple cases, there may be a way for the parties to do this, and I'd encourage on the call tomorrow to talk about whether that's possible so that you're not asking the same questions over and over again and that you can kind of cross-designate a transcript in multiple cases. You understand what I'm saying?

MR. GERBER: I do. We're happy to talk to Mr. Shaw about that tomorrow.

THE COURT: Okay. All right --

MR. GERBER: If I could respond to settlement conference - sorry, Your Honor.

THE COURT: No, go ahead. Go ahead.

MR. GERBER: Plaintiff is, of course, open to a settlement conference, but as Your Honor is aware, as seen today, there's still a huge amount of critical

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2 discovery open, and it's not just for the sake of
3 getting discovery, these are sales numbers, this goes to
4 willfulness, this is critical to understanding the full
5 value of the case, and plaintiff just doesn't want to go
6 into a settlement conference without having that full
7 information understanding the full scope and the full
8 damages of the case. So, yes, while we are certainly
9 amenable to discussing scheduling a settlement
10 conference, we need to have depositions first and
11 address some of these outstanding discovery issues
12 first. And, in fact, defendants have raised the same
13 issue in Fitzpatrick and they've raised it in Amore, and
14 the judges have last week ordered depositions to happen
15 before settlement conference is scheduled.

16 THE COURT: Yeah, I think --

17 MR. SHAW: Your Honor --

18 THE COURT: Go ahead. Go ahead, Mr. Shaw.

19 MR. SHAW: Yeah, Your Honor, Mr. Gerber has
20 made the exact same representation. He always says in
21 every case that he filed against my clients that there's
22 critical documents missing and there's massive amounts
23 of information he needs to engage in settlement
24 discussions. But miraculously, when the judges order
25 his clients, his individual clients to appear, what

1 PROCEEDINGS 29

2 happens in the two cases? In Keller and Wildfire, the
3 cases settled, and he didn't have depositions in those
4 cases. So while he, as the attorneys for his clients,
5 makes these statements about needing the information, it
6 doesn't appear, at least from the cases that have
7 settled, that his clients actually do because those
8 cases settled when he made the same representations but
9 only when ordered that his clients actually then come to
10 the table and settle.

11 And while you're right, Your Honor, that I can
12 propose numbers and propose to discuss settlement, I've
13 done that in every case time and time again. And Mr.
14 Gerber won't engage with me until he's ordered by the
15 court to do so.

16 THE COURT: Well, the bottom line is the
17 earlier dates I can offer you are the afternoons of
18 January 14 or 15, so --

19 (interposing)

20 MR. SHAW: We'll take them, Your Honor.

21 THE COURT: -- do you want to pick one of
22 those, but all the documents should get done in the
23 meantime. There's no reason that we shouldn't, that we
24 can't, that you two can't discuss at a minimum cross-
25 designating or cross-coordinating the witnesses that are

1 PROCEEDINGS 30

2 taking place, whether that information can be used in
3 multiple cases including this one. And to the extent
4 that your clients have availability in early January and
5 the two weeks before the settlement conference, we
6 should go ahead and get depositions done. There's no
7 reason that they can't. I know that Judge Furman
8 ordered I think that there are at least three or four
9 depositions take place before the settlement conference
10 in that case. I don't know that the plaintiff needs all
11 five of the witnesses who are listed, I think it was
12 five. Ms. Perez, Ms. Wong, Mr. Cantrell, Ms. Lu, and
13 Ms. Lee. I don't know that, Mr. Gerber, you need all
14 five of those before the depositions, but if you want to
15 at least do the 30(b)(6) and two others before the
16 settlement conference, I think that's reasonable.

17 MR. GERBER: We're fine with that, Your Honor,
18 yes.

19 THE COURT: Okay. So we will direct that the
20 30(b)(6) and two fact witness depositions take place
21 before the settlement conference. As between the 14th
22 and the 15th of January, Mr. Gerber, do you have a
23 preference?

24 MR. GERBER: So I mean I know that we and my
25 clients are not available the first two weeks of January

1 PROCEEDINGS 31

2 due to holidays and existing commitments, so that's just
3 not going to be possible for us.

4 MR. SHAW: If those aren't possible, Your
5 Honor, we have to push into like late February to do
6 depositions. Just because of the Chinese New Year, it's
7 not possible to get my witnesses in late January or
8 through mid-February. And I need time to get out there
9 to prep them and then to have the depositions and then
10 we'll have to do a settlement conference. Which is why
11 I thought it would make sense to do a settlement
12 conference early, it doesn't hurt to take a shot, see if
13 it settles. If it doesn't, we can move forward to
14 depositions. It's certainly more efficient.

15 THE COURT: Well, so, Mr. Gerber, you're saying
16 you can't do January 14 or 15 for a settlement
17 conference?

18 MR. GERBER: That's correct. There's schools I
19 think don't come back until the second, the early second
20 week of January, and then we have existing, there's
21 other existing settlement conferences and other
22 commitments that second week.

23 MR. SHAW: The 14th and 15th is the third week
24 of January, just to be clear.

25 THE COURT: Third week in January, yeah.

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2 MR. SHAW: I'm looking at my calendar, it looks
3 like the third week.

4 THE COURT: What about, well, would your
5 clients be able to participate - the week of January 27
6 is that in the Chinese holidays?

7 MR. GERBER: I'm sorry, to be clear, yeah, it's
8 that, I'm sorry, I meant to say the first full week of
9 January is when, you know, school resumes, and then
10 there's commitments that second full week of January.

11 THE COURT: So what about the week of the 27th?

12 MR. GERBER: Of January? That works for us. I
13 can check with my client, but I believe that does work
14 for us.

15 THE COURT: Okay.

16 MR. SHAW: For purposes of the settlement
17 conference, yes, my client who is located in the United
18 States can participate in a settlement conference on the
19 27th of January. I'm assuming that week, I would have to
20 check the dates.

21 THE COURT: I can't do the 27th, but I could do
22 the afternoon, I'll give you the afternoon on Tuesday,
23 Wednesday, or Thursday, 28th, 29th, or 30th.

24 (interposing)

25 MR. SHAW: I'll check with my clients --

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MR. GERBER: To be clear, this is going to have to happen after the 30(b)(6) and two fact witness depositions, so as long as --

THE COURT: The three depositions are going to take place before that. So you're going to have to figure out your schedule and make it happen, Mr. Gerber. You're the one who wants the depositions, and I'm giving you more, I'm pushing the settlement conference off. So you need to find a way to make this work.

MR. GERBER: That's fine. We have the second half of January free and can try to schedule depositions within that period.

THE COURT: Great.

MR. GERBER: Before the settlement conference.

MR. SHAW: We only have the January 6 through January 17, we have that two-week window is open for us.

THE COURT: Okay, well, that's a lot of time. It's only three depositions. All right, so it's hard for me to hold a lot of dates open because I have other things going on, but I can hold open the afternoon of January 28 and the afternoon of January 29. Can you confer with your clients and get back to me by tomorrow?

MR. SHAW: Yes, Your Honor. I have a call with my clients today, so I'll ask. 28th and 29th afternoons?

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2 THE COURT: 28th and 29th starting at 2.

3 MR. SHAW: Okay, 2 p.m. eastern, okay.

4 THE COURT: And would --

5 (interposing)

6 MR. SHAW: And I assume that would be remote?

7 THE COURT: Well, where is everybody? Where is
8 Ms. Menzel, Mr. Gerber?

9 MR. GERBER: She's in Germany.

10 THE COURT: Okay. So we could, well, would she
11 want the morning then because there's a time - we could
12 do the morning on the 29th?

13 MR. GERBER: Yes.

14 THE COURT: Okay. All right, so can you -
15 backtracking a little bit, check on the morning of the
16 29th or the morning, I could do the morning of the 30th.
17 So change course a little bit for you. So morning
18 starting at 10 a.m. on either January 29 or January 30
19 for a settlement conference.

20 MR. SHAW: Okay, should we email chambers if we
21 --

22 (interposing)

23 THE COURT: Yeah, email chambers and copy your
24 counterpart there. So then obviously we'll wait for the
25 time to expire on motion for leave to amend, but if it's

1 PROCEEDINGS 35

2 not opposed, it's going to happen. And what we'll do
3 since the settlement conference is not going to be till
4 the end of January, we'll extend fact discovery to the
5 14th of February so that if the case doesn't settle,
6 you'll have two weeks after that to try to get the
7 depositions in or we'll reassess where we are and what
8 needs to get done at that point in time. Okay?

9 MR. SHAW: Okay.

10 MR. GERBER: Thank you, Your Honor.

11 THE COURT: Mr. Gerber, anything else on your
12 list that we haven't covered?

13 MR. GERBER: Nothing for plaintiff, Your Honor.

14 THE COURT: Okay, Mr. Shaw.

15 MR. SHAW: Nothing for defendants, Your Honor,
16 thank you.

17 THE COURT: Thank you, you'll see a post-
18 conference order from us with instructions. What I
19 would say is, you know, you're going to have the call
20 between you to tomorrow about scheduling depositions, if
21 there's - I wasn't - since you do have a bust November
22 and December, I wasn't going to put another status call
23 on, but if things go off the rails, ask for that sooner
24 rather than later so that we can get on the phone before
25 the end of the year. Okay?

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2 MR. SHAW: Okay, thank you, Your Honor.

3 MR. GERBER: Understood.

4 THE COURT: Okay, thank you very everyone.

5 We'll be adjourned for today. Have a good afternoon.

6 MR. SHAW: Thanks.

7 MR. GERBER: Thanks. Bye.

8 (Whereupon, the matter is adjourned.)

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C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of MENZEL v. ROADGET, et al., Docket #24cv860, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: November 8, 2024